



9-16-04

AF/2642  
GFW

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Postage Prepaid, Express Mail Label No. EV425069504US in an envelope addressed to: MAIL STOP APPEAL BRIEF - PATENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on 15 September 2004.

PATENT  
Our Case No. 10022/151

Deanna A. Hasler  
Deanna Hasler

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of )  
Valery A. Petrushin ) Group Art Unit 2642  
Serial No.: 09/833,301 )  
Filed: April 10, 2001 )  
For: DETECTING EMOTION IN VOICE SIGNALS )  
IN A CALL CENTER )  
Examiner: Benny Quoc Tieu

**APPEAL BRIEF**

MAIL STOP APPEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal is in response to the Final Office Action mailed April 21, 2004. A Notice of Appeal and the required fee were filed on July 15, 2004.



## TABLE OF CONTENTS

I.	Real Party in Interest .....	3
II.	Related Appeals and Interferences .....	3
III.	Status of Claims .....	3
IV.	Summary of Invention .....	3
V.	Issues .....	5
VI	Argument .....	5
A.	The Statutory Standard .....	5
	1. 35 U.S.C. § 112 first paragraph .....	5
	2. 35 U.S.C. § 102(e) .....	6
B.	Issues Raised on Appeal .....	7
	1. The 35 U.S.C. § 112 first paragraph rejection of Claims 2-4 .....	7
	2. The 35 U.S.C. §102(e) rejection of Claims 2-4 .....	11
C.	Conclusion .....	12
VII.	Appendices.....	13
	Current State of Claims 2-4.....	APPENDIX A
	Office Action mailed April 21, 2004 .....	APPENDIX B
	Final Office Action Response facsimile transmitted on May 11, 2004....	APPENDIX C
	Advisory Action mailed May 26, 2004 .....	APPENDIX D
	Office Action Response facsimile transmitted on June 18, 2004.....	APPENDIX E
	Advisory Action mailed on July 8, 2004.....	APPENDIX F
	U.S. Patent No. 6,542,602 to Elazar.....	APPENDIX G
	Request for Declaration Of Interference filed on January 27, 2004.....	APPENDIX H



**I. Real Party in Interest**

Accenture Global Services GmbH is the real party in interest.

**II. Related Appeals and Interferences**

Applicant has requested declaration of an interference between the pending claims of the present application and U.S. Patent No. 6,542,602 to Elazar (see Appendix G and H). The undersigned is unaware of any other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims**

Claims 2-4 are pending and Claim 1 was previously cancelled. Claims 2-4 stand rejected and are the subject of this appeal. The current state of Claims 2-4 are included as Appendix A.

**IV. Summary of Invention**

As disclosed on pages 16-24 and also discussed throughout the specification, the invention involves a method of monitoring telephonic interactions of an agent with customers. The invention is directed towards monitoring telephone call conversations between agents and customers in a call center environment. The entire conversations between the agents and customers may be recorded, or portions of the conversations may be recorded, if the claimed invention detects that a monitoring condition is satisfied. As set forth in Applicant's specification, the preferred monitoring condition is nervousness, however, other emotions may be monitored as well. *See* Page 25, line 29 to Page 26, line 2.

Below is identification of the pages and line numbers associated with each feature of claims 2-4.

<b>Claim 2</b>	<b>Support In Applicant's Specification</b>
2. A method for monitoring telephonic interactions of an agent with customers, the method comprising:	Page 16, lines 2-10; Page 26, lines 3-5; Page 26, lines 25-28; and throughout the specification.
(a) pre-recording a first speech portion of a telephone call received by an agent;	Page 26, lines 21-23; and throughout the specification.
(b) determining whether said first speech portion satisfies a monitoring condition, and, if so:	Page 26, lines 17-21; and throughout the specification.
(c) recording at least a second portion of said telephone call.	Page 26, lines 21-23; and throughout the specification.

<b>Claim 3</b>	<b>Support In Applicant's Specification</b>
2. A method for monitoring telephonic interactions of an agent with customers, the method comprising:	Page 16, lines 2-10; Page 26, lines 3-5; Page 26, lines 25-28; and throughout the specification.
(a) pre-recording a first speech portion of a telephone call received by an agent;	Page 26, lines 21-23; and throughout the specification.
(b) determining whether said first speech portion satisfies a monitoring condition, and, if so:	Page 26, lines 17-21; and throughout the specification.
(c) recording at least a second portion of said telephone call.	Page 26, lines 21-23; and throughout the specification.
(d) wherein said determining step comprises determining a speech rate of words spoken during said telephone call and wherein said monitoring condition is whether said speech rate exceeds a predetermined level.	Page 2, line 13; Page 20, line 18 and 24; Page 22, line 3; and throughout the specification.

<b>Claim 4</b>	<b>Support In Applicant's Specification</b>
2. A method for monitoring telephonic interactions of an agent with customers, the method comprising:	Page 16, lines 2-10; Page 26, lines 3-5; Page 26, lines 25-28; and throughout the specification.
(a) pre-recording a first speech portion of a telephone call received by an agent;	Page 26, lines 21-23; and throughout the specification.
(b) determining whether said first speech portion satisfies a monitoring condition, and, if so:	Page 26, lines 17-21; and throughout the specification.
(c) recording at least a second portion of said telephone call.	Page 26, lines 21-23; and throughout the specification.
(d) wherein said determining step comprises determining a state of emotion present during said telephone call and wherein said monitoring condition is whether said state of emotion exceeds a predefined emotion threshold.	Page 26, lines 17-19; and throughout the specification.

## **V. Issues**

1. Claims 2-4 stand rejected pursuant to 35 U.S.C. § 112 first paragraph for failing to comply with the written description requirement.
2. Claims 2-4 stand rejected pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,542,602 to Elazar.

## **VI. Argument**

### **A. The Statutory Standards**

1. 35 U.S.C. § 112 first paragraph provides:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

A 35 U.S.C. § 112 first paragraph rejection may be based on a finding that the specification is non-enabling, and therefore does not enable one skilled in the art to make and use the claimed invention. *DeGeorge v. Bernier*, 768 F.2d 1318, 1323, 226 USPQ 758 (Fed. Cir. 1985). In the specification the inventor is speaking to one skilled in the art, therefore every last detail need not be described. *Id.* A specification can still be enabling even where some amount of experimentation is needed, so long as the experimentation is not unduly excessive. *Hybritech Inc. v. Monoclonal Antibodies, Inc.* 802 F.2d 1367, 1384, 231 USPQ 81 (Fed. Cir. 1986). Factors that may be used in considering whether the level of experimentation is excessive include: "1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims." *In re Wands*, 858 F.2d 731, 737, 8 USPQ 2d 1400 (Fed. Cir. 1988). In order to satisfy the enablement requirement, 35 U.S.C. § 112 first paragraph allows consideration of material outside the specification since repeating all the knowledge of the past would result in a specification of unnecessary length. *Amtel v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1382, 53 USPQ2d 1225 (Fed. Cir. 1999).

2. 35 U.S.C. § 102(e) provides:

A person shall be entitled to a patent unless — (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent.....

To qualify as a prior art reference for use in a 35 U.S.C. § 102(e) rejection of Claims in a patent application, a reference must have an effective U.S. filing date, or in certain

circumstances an international priority date, that is before the effective filing date of the patent application. MPEP 706.02, pages 700-19 – 700-38.

## **B. Issues Raised On Appeal**

The methods described by Claims 2, 3 and 4 each include the steps of a) pre-recording a first speech portion of a telephone call received by an agent, b) determining whether said first speech portion satisfies a monitoring condition, and if so: c) recording at least a second portion of said telephone call.

### **1. The 35 U.S.C. § 112 first paragraph rejection of Claims 2, 3 and 4.**

The basis for the 35 U.S.C. § 112 first paragraph rejection of Claims 2, 3 and 4, as detailed in the Final Office Action mailed April 21, 2004 and included as Appendix B is that the specification fails to support the steps of pre-recording a first speech portion and determining whether said first speech portion satisfies a monitoring condition. However, page 26 lines 17-23 of Applicant's specification state that:

As another option, the indication of the level of nervousness may include an alarm that is set off when the level of nervousness goes above a pre-determined level. The alarm may include a visual notification on a computer display, an auditory sound, etc. to alert an overseer, the listener, and/or one searching for fraud. The alarm could also be connected to a recording device which would begin recording the conversation when the alarm was set off, if the conversation is not already being recorded.

As discussed in detail in the Office Action Response facsimile transmitted to the US Patent Office on May 11, 2004 and included as Appendix C, Applicant respectfully asserts that the specification clearly supports steps a), b) and c) of each of Claims 2-4.

As indicated in the Advisory Action mailed on May 26, 2004, which is included as Appendix D, it was acknowledged that Applicant's specification describes that a conversation is being recorded when an alarm is set off based on detection of a level of nervousness above

a predetermined level. It was further acknowledged that recording of the conversation could begin based on the alarm being set off. However, it is apparently being asserted in the Advisory Action mailed on May 26, 2004 that the specification fails to enable one skilled in the art to record the conversation, analyze the conversation and set off an alarm to continue recording the conversation.

As was further discussed in the Office Action Response facsimile transmitted on May 11, 2004 (Appendix C), Applicant's specification includes a number of instances and example embodiments where both determination of whether a speech signal satisfies a monitoring condition, and recordation of the speech signal are taught. Clearly the concepts of both recording and determination of a monitoring condition is enabled by Applicant's specification. Further, as previously discussed, Applicant's specification clearly enables one skilled in the art to begin recording, or continue recording, in response to a monitoring condition being satisfied.

In the Advisory Action mailed on May 26, 2004 (Appendix D), it was asserted that when the recording simply continues, "the recorded portion is not used for the purpose of determination [of] the level of nervousness in order for the alarm to be set off as claimed." This is directly contrary to the specification in which, the alarm is set off when the level goes above a predetermined level. Since Applicant's specification describes that the alarm could begin the recording if the conversation is not already being recorded, inherently, it follows that the lack of an alarm could end the recording of a conversation already being recorded. Applicant asserts that based on the amount of direction and guidance presented, such a concept is clearly within the grasp of one skilled in the art. This is especially the case in view of past knowledge regarding recording and detecting emotion in speech signals and further in view of the lack of undue experimentation necessary.



This point is further elaborated in the Office Action Response that is attached as Appendix E and was facsimile transmitted to the U.S. Patent Office on June 18, 2004. In the June 18, 2004 Response it was pointed out that the features described in Claims 2-4 do not preclude a continuous recording in which it is determined whether a first portion of the speech recording satisfies a monitoring condition.

In the Advisory Action mailed on July 8, 2004, that is attached as Appendix F, it has been asserted that Claims 2-4 include a limitation that the "the pre-recorded portion in step a) is used for the purpose of determining the monitoring condition in step b)." In fact, steps a) and b) in Claims 2-4 describe that it is the first speech portion that is used to determine if a monitoring condition is satisfied. Step b) includes no limitations, such as "said pre-recorded first speech portion," to indicate that it is a recording that is used to determine whether a monitoring condition is satisfied. In fact, the only element in step b) that is also in step a) is the term "first speech portion" as evidence by the term "said." If the specification does not require a limitation, then that limitation should not be read into the claims from the specification. *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 987, 6 USPQ2d 1601 (Fed. Cir. 1988). Accordingly, since the limitation "pre-recording" is not used in step b), it should not be read into step b).

As further detailed in the Office Action Response facsimile transmitted to the U.S. Patent Office on June 18, 2004 (Appendix E), Applicant respectfully points out that steps a) and b) do not include any limitation indicating that steps a) and b) must occur sequentially, simultaneously (in "real time"), or in any particular order. The steps in a method claim need not be restricted to being performed in any particular order where the claim nor the specification requires such a narrow construction of the claim. *Interactive Gift Express, Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1342, 59 USPQ2d 1401 (Fed. Cir. 2001) Accordingly,

reading in an additional limitation that first step a) occurs and then step b) occurs using the results of step a) as asserted in the Advisory Action mailed May 26, 2004 (Appendix D) improperly restricts the scope of Claims 2-4.

The Advisory Action mailed on July 8, 2004 (Appendix F) further asserts that the term "pre-" in pre-recording precludes determining whether the first speech portion satisfies a monitoring condition in "real time" while the first speech is being pre-recorded, or in other words, simultaneously with the pre-recording of the first speech portion. In fact, pre-recording the first speech portion in step a) indicates a sequential relationship with recording the second speech portion in step c) such that the first speech portion of a telephone call is recorded prior to the second speech portion of said telephone call. As is well known, a conversation is a sequential stream of words in which some words precede other words. Accordingly, recording a conversation inherently includes recording a first word, or group of words, that are spoken earlier in the conversation followed by recording of a second word, or group of words, occurring later in the conversation. Hence the first word or group of words may be "pre-recorded" with respect to recordation of the second word or group of words. Clearly the recording could encompass the entire conversation, and thus be a continuous recording in which a first portion of the conversation is recorded earlier in time, or in front of, a second portion of the conversation. The terms in a claim should be read with broadest reasonable interpretation that is consistent with the specification during patent examination. *In re Hyatt*, F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000) Clearly the above interpretation of the terms included in steps a) through c) of Claims 2-4 is not an unreasonably broad interpretation.

2. The 35 U.S.C. §102(e) rejection of Claims 2-4

In the Final Office Action mailed on April 21, 2004 (Appendix B), Claims 2-4 were also initially rejected pursuant 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,542,602 to Elazar (hereinafter "the Elazar patent"), which is included as Exhibit G. Although the Elazar patent was filed on February 14, 2000, which is after the effective filing date of Applicant's application (August 31, 1999), it was indicated that the effective filing date of Claims 2-4 was January 27, 2004. January 27, 2004 was the date that Applicant filed a Request for Declaration of Interference (attached as Appendix H) with the Elazar patent. The Declaration Of Interference also included claim amendments to add Claims 2-4 to the application.

It was further indicated in the Final Office Action mailed on April 21, 2004 (Appendix B), that the effective filing date was January 27, 2004 "since support for all claimed limitations are not found in the specification as originally filed." Since Claims 2-4 are fully supported by the specification, as previously discussed, this rejection is moot. However, if one assumes for purposes of discussion that the specification fails to support Claims 2-4, which is clearly not the case, establishment of an effective filing date of January 27, 2004 is improper. As is notoriously well known, Claims added by amendment to a previously filed patent application that are not supported by the specification do not change the effective filing date of the application. Accordingly, the 35 U.S.C. §102(e) rejection of Claims 2-4 is also improper.

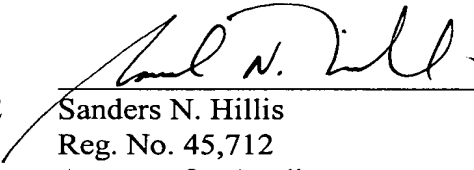
### C. Conclusion

In summary, the 35 U.S.C. § 112 first paragraph rejection of Claims 2-4 should be overturned. Claims 2-4 are fully enabled by the specification. In addition, the specification does enable a person skilled in the art to make and use the invention described in Claims 2-4. The 35 U.S.C. §102(e) rejection of Claims 2-4 should also be overturned since the effective filing date of an application cannot be determined arbitrarily based on the date that Claims were submitted by amendment to the U.S. Patent Office.

Dated: September 15, 2004

Respectfully submitted,

BRINKS HOFER GILSON & LIONE  
One Indiana Square, Suite 1600  
Indianapolis, Indiana 46204  
Telephone: 317-636-0886  
Facsimile: 317-634-6701



---

Sanders N. Hillis  
Reg. No. 45,712  
Attorney for Applicant

Attachment: Exhibits A, B, C, D, E, F,  
G and H



## **VII. Appendices**

## **CURRENT STATE OF CLAIMS**

1. (Canceled)
2. (Previously Presented) A method for monitoring telephonic interactions of an agent with customers, the method comprising:
  - (a) pre-recording a first speech portion of a telephone call received by an agent;
  - (b) determining whether said first speech portion satisfies a monitoring condition, and, if so:
  - (c) recording at least a second portion of said telephone call.
3. (Previously Presented) A method for monitoring telephonic interactions of an agent with customers, the method comprising:
  - (a) pre-recording a first speech portion of a telephone call received by an agent;
  - (b) determining whether said first speech portion satisfies a monitoring condition, and, if so:
  - (c) recording at least a second portion of said telephone call; and
  - (d) wherein said determining step comprises determining a speech rate of words spoken during said telephone call and wherein said monitoring condition is whether said speech rate exceeds a predetermined level.
4. (Previously Presented) A method for monitoring telephonic interactions of an agent with customers, the method comprising:
  - (a) pre-recording a first speech portion of a telephone call received by an agent;
  - (b) determining whether said first speech portion satisfies a monitoring condition, and, if so:
  - (c) recording at least a second portion of said telephone call; and
  - (d) wherein said determining step comprises determining a state of emotion present during said telephone call and wherein said monitoring condition is whether said state of emotion exceeds a predefined emotion threshold.

## CURRENT STATE OF CLAIMS

1. (Canceled)

2. (Previously <sup>Presented</sup> ~~Submitted~~) A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call.

3. (Previously <sup>Presented</sup> ~~Submitted~~) A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call; and
- (d) wherein said determining step comprises determining a speech rate of words spoken during said telephone call and wherein said monitoring condition is whether said speech rate exceeds a predetermined level.

4. (Previously <sup>Presented</sup> ~~Submitted~~) A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call; and
- (d) wherein said determining step comprises determining a state of emotion present during said telephone call and wherein said monitoring condition is whether said state of emotion exceeds a predefined emotion threshold.



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,301	04/10/2001	Valery A. Petrushin	10022/151	2957
33391	7590	04/21/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE ONE INDIANA SQUARE, SUITE 1600 INDIANAPOLIS, IN 46204			TIEU, BENNY QUOC	
			ART UNIT	PAPER NUMBER
			2642	11

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED  
APR 23 2004  
BRINKS, HOFER,  
GILSON & LIONE



# Office Action Summary

Application No.

09/833,301

Applicant(s)

PETRUSHIN, VALERY A.

Examiner

Benny Q. Tieu

Art Unit

2642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

RECEIVED

APR 23 2004

BRINKS, HOFER,  
GILSON & LONE

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to support the step of **pre-recording a first speech portion of a telephone call received by an agent and said first speech portion is determined to whether or not a monitoring condition is met.** What the Applicant's specification disclosed on page 26, lines 21-23 or throughout the specification is to monitoring the level of nervousness of a person and to including an alarm when it is set off to trigger a recording device to **begin** recording the conversation. The Applicant's specification is silent on a portion of the conversation is pre-recording and that portion is tested before a second portion is recorded.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 2-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Elazar (U.S. Patent No. 6,542,602).

It should be noted that the effective date of the new claimed invention is the date of amendment filed on January 27, 2004 since support for all claimed limitations are not found in the specification as originally filed.

Regarding claims 2-4, see column 3, line 50 through column 4, line 30.

***Response to Arguments***

5. Applicant's arguments filed Jan. 27, 2004 have been fully considered but they are not persuasive. Examiner agrees with Applicant in summary Applicant's specification (page 25, line 29 to page 26, line) as stated on page 8 of amendment filed Jan. 27, 2004. However, Applicant's specification fails to support what the Applicant claimed per claims 2-4 in which a portion of conversation is **pre-recorded** prior to that portion is tested whether or not to meet the monitoring condition. Applicant's specification including monitoring a conversation for the level of nervousness of a person is different with the Applicant's new claimed invention including pre-

Art Unit: 2642

recording a portion of conversation and using said portion to determine whether or not said portion satisfying the monitoring condition.

***Conclusion***

6. Any response to this action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

OR Hand-delivered responses should be brought to:

Crystal Park II, Sixth Floor (Receptionist)

2121 Crystal Drive

Arlington, VA 22202.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

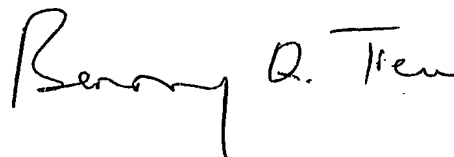
Art Unit: 2642

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benny Q. Tieu whose telephone number is (703) 305-2360. The examiner can normally be reached on Monday-Friday: 6:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**BENNY TIEU  
PRIMARY EXAMINER**

Art Unit 2642

April 12, 2004

Certificate Under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office Central Facsimile Number, 703-872-9306, on May 11, 2004.

Deanna L. Hasler  
Deanna L. Hasler

**PATENT**  
**Our Case No. 10022/151**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of )  
Valery A. Petrushin ) Group Art Unit 2642  
Serial No.: 09/833,301 ) Examiner: Benny Quoc Tien  
Filed: April 10, 2001 )  
For: SYSTEM, METHOD AND ARTICLE OF )  
MANUFACTURE FOR DETECTING EMOTION IN )  
VOICE SIGNALS BY UTILIZING STATISTICS )  
FOR VOICE SIGNAL PARAMETERS )

MAIL STOP AF - EXPEDITED RESPONSE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**EXPEDITED RESPONSE TO FINAL OFFICE ACTION**  
**MAILED APRIL 21, 2004**

Dear Sir:

In response to the Final Office Action mailed April 21, 2004, please consider the following remarks.

**REMARKS**

Claims 2-4 remain pending in the application, and are currently rejected pursuant to 35 U.S.C. § 112, first paragraph. The Examiner has asserted that the claims fail to comply with the written description requirement because, "Applicant's specification is silent on a portion of the conversation that is pre-recorded, and that portion is tested before a second portion is recorded." Applicant respectfully disagrees.

Each of Claims 2, 3 and 4 include the step of "(a) pre-recording a first speech portion of a telephone call received by an agent." As detailed in Applicant's Request for Declaration of Interference, mailed on January 22, 2004, step (a) in each of Claims 2, 3 and 4 is supported in Applicant's specification by page 26, lines 21-23; and throughout the specification. Page 26 lines 21-23 state that "The alarm could also be connected to a recording device which would begin recording the conversation when the alarm was set off, *if the conversation is not already being recorded.*" (emphasis added) Clearly, lines 22 and 23, on page 26 indicate that the conversation may already be being recorded. In addition, other portions of the specification describe pre-recording a voice signal including page 34, lines 20-23 and page 57, lines 2-6, among others. Clearly, pre-recording a first speech portion of a telephone call received by an agent is supported by the specification.

Each of Claims 2, 3 and 4 also include the step of "(b) determining whether said first speech portion satisfies the monitoring condition, and, if so:." As also discussed in Applicant's Request for Declaration of Interference, mailed on January 22, 2004, step (b) in each of Claims 2, 3 and 4 is supported in Applicant's specification by page 26, lines 17-21, and throughout the specification. Page 26 lines 17-21 state "As another option, the indication of the level of nervousness may include an alarm that is set off when the level of nervousness goes above a pre-determined level. The alarm may include a visual notification on a computer display, an auditory sound, etc. to alert an overseer, the listener, and/or one searching for fraud." Page 25 lines 23-28 state: "The voice signals are analyzed during the business event in operation 702 to determine a level of nervousness of the person....In operation 704, an indication of level of nervousness is output, preferably before the business event is completed so that one attempting to prevent fraud can make an assessment whether to confront the person before the person leaves." In addition, other portions of the specification also describe step (b) that include page 35, lines 27-29, and page 36, lines 12-16,

among others. Accordingly, determining whether the first portion satisfies the monitoring condition is supported.

It appears from the Office Action that the Examiner has read an additional limitation(s) into the claims that is not otherwise present. The Examiner has indicated that "a portion of the conversation is pre-recorded and that portion is tested before a second portion is recorded." Each of Claims 2, 3 and 4 disclose that the first speech portion is pre-recorded, and it is determined whether the same first speech portion satisfies a monitoring condition. Hence, there appears to be no feature or other indication in any of the Claims that the first speech portion is first recorded and the recording is then analyzed to determine if a monitoring condition has been satisfied. In fact, Claims 2, 3 and 4 may be construed such that the pre-recording and the analysis could occur simultaneously and be performed completely independently.

In addition, each of the Claims do not disclose that the first portion is recorded, recording is halted, the first speech portion is used to determine if a monitoring condition is satisfied, and if so, recording of the second portion of the speech portion commences. Instead, each of the Claims indicate that the first speech portion (which is also pre-recorded) is used to determine if a monitoring condition is satisfied. Thus, the method could possibly be interpreted to include recording the first speech portion and continuing on to record the second speech portion as one continuous recording, so long as the monitoring condition is satisfied.


For at least the foregoing reasons, Claims 2-4 are supported by the specification and meet the written description requirement pursuant to 35 U.S.C. § 112, first paragraph. Since the Claims 2-4 are supported and meet the written description requirement, US Patent No. 6,542,602 to Elzar is not prior art, and the Examiner's 35 U.S.C § 102(e) rejection is moot. Applicant respectfully requests the Examiner to withdraw the 35 U.S.C. § 112, first paragraph rejection, and the 35 U.S.C. § 102(e) rejection of claims 2-4.

In addition, Applicant respectfully requests the Examiner to declare an interference between this application and U.S. Patent No. 6,542,602, which issued to Elazar on April 1, 2003.



Should the Examiner deem a telephone conference to be beneficial in expediting declaration of the interference, the Examiner is invited to call the undersigned attorney at the telephone number listed below. No fees are believed to be due at this time, however, should any fees be deemed required, please charge such fees therefor to Deposit Account No. 23-1925.

Respectfully submitted,



Sanders N. Hillis  
Reg. No. 45,712

BRINKS HOFER GILSON & LIONE  
One Indiana Square, Suite 1600  
Indianapolis, Indiana 46204-2033  
Telephone: (317) 636-0886  
Fax: (317) 634-6701



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,301	04/10/2001	Valery A. Petrushin	10022/151	2957

33391 7590 05/26/2004  
BRINKS HOFER GILSON & LIONE  
ONE INDIANA SQUARE, SUITE 1600  
INDIANAPOLIS, IN 46204

EXAMINER

TIEU, BENNY QUOC

ART UNIT	PAPER NUMBER
----------	--------------

2642

DATE MAILED: 05/26/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED  
JUN 1 2004  
BRINKS, HOFER,  
GILSON & LIONE

**Advisory Action**

Application No.

09/833,301

Applicant(s)

PETRUSHIN, VALERY A.

Examiner

Benny Q. Tieu

Art Unit

2642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see attached sheets).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 2-4.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

**RECEIVED**

JUN 1 2004

BRUNKS, HUFER,  
GILSON & LIONEBenny Q. Tieu  
Primary Examiner  
Art Unit: 2642

Art Unit: 2642

Examiner has reviewed all portions of the specification indicated by Applicant where the Applicant states support for the claimed invention is found. However, Examiner believes that Applicant's specification does not support the claimed invention.

Applicant argues that the specification, page 26, lines 21-23, supports claims 2-4. Page 26, lines 21-23, states that "The alarm could also be connected to a recording device which would begin recording the conversation when the alarm was set off, if the conversation is not already being recorded." (emphasis added). There are two assumptions, the first assumption is that the conversation is not being recorded when the alarm was set off (of course, because the level of nervousness goes above a pre-determined level), then the recording of conversation will begin. In this case, clearly, the level of nervousness is determined not based upon the "pre-recording of a first portion of a telephone call" as claimed in the claims 2-4. Now, the second assumption is that the conversation is being recorded when the alarm was set off because the level of nervousness goes above a pre-determined level. In this case, the recording will simply continue and this mean that the recorded portion is not used for the purpose of determination the level of nervousness in order for the alarm to be set off as claimed. Therefore, Examiner concludes that page 26, lines 21-23, does not support the limitations of claims 2-4.

Page 34, lines 20-23 (Applicant's specification) is directed to an apparatus for producing visible records as shown in Fig. 9. Nothing deals with "pre-recording a first portion of a telephone call" and said first portion being used to determine whether or not a second portion is to be recorded as claimed.

Page 57, lines 2-6 (Applicant's specification) is directed to grouping voice messages in a mailbox based on the negative emotions (e.g. sadness, anger or fear). Again, nothing deals with

“pre-recording a first portion of a telephone call” and said first portion being used to determine whether or not a second portion is to be recorded as claimed.

Page 26, lines 17-21, states “As another option, the indication ... searching for fraud.” Again, nothing deals with “pre-recording a first portion of a telephone call” and said first portion being used to determine whether or not a second portion is to be recorded as claimed.

Page 25, lines 23-28, states “The voice signals are analyzed.... before the person leaves.”. Page 35, lines 27-29 and page 36, lines 12-16 are directed to screening the conversation. Again, nothing deals with “pre-recording a first portion of a telephone call” and said first portion being used to determine whether or not a second portion is to be recorded.

Further, Applicant argues on page 3 of the remarks that the first step (pre-recording a first portion) and second step (determining whether said first portion) of claims 2-4 “may be construed such that the first step and second step occur simultaneously and be performed completely independently”. Examiner respectfully disagrees. The purpose of the first step is to be used for the second step as in the claims. Based on Applicant’s interpretation, the first step is not necessary, and it may cause “112 rejection” issue. Moreover, in each of claims 2-4, each of the steps are indicated as sequence steps, e.g. (a), (b) or (c), etc. It is impossible to consider these steps occur simultaneously and be performed completely independently. Note that (b) uses (a), and (c) uses (b). the sequence is clear in claim 2 as well as in claims 3 and 4.

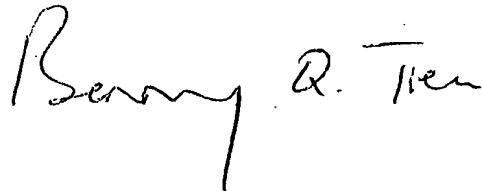
Also on page 3 of the Remarks, Applicant states “In addition, each of the Claims do not .... Thus, the method could possibly be interpreted to include recording the first speech portion and continuing on to record the second speech portion as one continuous recording, so long as the monitoring condition is satisfied.” The Examiner respectfully disagrees with this

Art Unit: 2642

interpretation. Pre-recording a first portion is completely different from continuous recording. The claims clearly recite the feature of whether or not the second portion is necessary to be recorded based on the first portion. Applicant's interpretation is that the whole conversation is anyway recorded.

To summarize, the claims require a "pre-recording" which is positively, always and unconditionally used for the determination to decide to record a second portion of the conversation. There is no condition ("if" is used in specification, page 26, lines 21-23) in the claims and the pre-recording is always a must. Beginning to record, or continuing to record as described in the specification is different from "pre-recording a first portion" and then determining to "record a second portion". In the specification, there is never two portions. Either begin to record or continue to record one portion only.

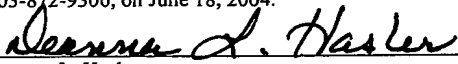
In conclusion, Examiner believes that claims 2-4 are NOT supported by the specification and Examiner maintains the rejection under 35 U.S.C. 112, first paragraph.



**BENNY TIEU**  
**PRIMARY EXAMINER**

Certificate Under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office Central Facsimile Number, 703-872-9306, on June 18, 2004.

  
Deanna L. Hasler

**PATENT**

**Our Case No. 10022/151**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of )  
Valery A. Petrushin ) Group Art Unit 2642  
Serial No.: 09/833,301 ) Examiner: Benny Quoc Tien  
Filed: April 10, 2001 )  
For: SYSTEM, METHOD AND ARTICLE OF )  
MANUFACTURE FOR DETECTING EMOTION IN )  
VOICE SIGNALS BY UTILIZING STATISTICS )  
FOR VOICE SIGNAL PARAMETERS )

MAIL STOP AF - EXPEDITED RESPONSE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**EXPEDITED RESPONSE TO ADVISORY ACTION**  
**MAILED MAY 26, 2004**

Dear Sir:

In response to the Advisory Action mailed May 26, 2004, please consider the following remarks.

**REMARKS**

Claims 2-4 remain pending in the application, and are currently rejected pursuant to 35 U.S.C. § 112, first paragraph. The Examiner has asserted that the claims fail to comply with the written description requirement. Specifically, on page 2 of the Advisory Action of May 26, the Examiner considered page 26, lines 21-23 of Applicant's specification, and proposed two possible factual assumptions based on the quoted text. Applicant agrees that the two factual assumptions follow from the quoted text, but request that the Examiner

reconsider his conclusion about whether the second assumption, drawn from applicants specification, satisfies the written description requirements to support claims 2-4.

The second factual assumption posed by the Examiner was that “the conversation is being recorded when the alarm was set off because the level of nervousness goes above a pre-determined level. In this case the recording will simply continue...” The Examiner then concludes that “...this means that the recorded portion is not used for the purpose of determination the level of nervousness in order for the alarm to be set off as claimed.” But this is wrong.

In the posed hypothetical fact situation that the Examiner constructs from the applicant’s specification, the recorded portion of the conversation has been used to set off the alarm. The alarm was set off in “real-time” and without the need for any play-back of the recorded portion. But, a play-back of the recorded portion is not required by any of the claims in question. Claims 2-4 each require the step of “determining whether said first speech portion satisfies a monitoring condition.” No portion of the claim requires the step of determining from the pre-recording whether said first speech portion satisfies a monitoring condition. Applicant agrees that the first step of claims 2-4 requires that some portion of a telephonic speech be recorded in advance of the second step. Applicant also agrees that the second step requires some determination be made from that portion of the telephonic speech, but it can be in “real-time”.

This “real-time” analysis of the speech, as opposed to a playback mode, is precisely the fact situation that the Examiner has constructed from the applicant’s specification and so it must be supported under 35 U.S.C. § 112. This “real-time” analysis of the speech is also disclosed in U.S. Patent 6,542,602, from which claims 2-4 have been copied. The Examiner’s attention is directed to the paragraph bridging columns 6 and 7 of the ‘602 patent which states: “Monitoring system 16 preferably stores captured audio and screen data to one or more storage media 26 and provides captured audio and screen data to one or more



supervisor workstations 18 either in *real-time* or later in a playback mode where audio, screen data, and other data may be monitored separately or simultaneously.” There is nothing in claims 2-4 or the ‘602 patent that precludes the alarm condition occurring in real-time. While according to claims 2-4 there must be a first portion of speech that is recorded, and there must be some triggering characteristic observed in this first portion of speech, the claims do not require that this triggering characteristic be extracted from the recording – it merely needs to be extracted from the speech it self either in “real-time” or in “play-back”.

For at least the foregoing reasons, Claims 2-4 are supported by the applicant’s specification and meet the written description requirement pursuant to 35 U.S.C. § 112, first paragraph. Since the Claims 2-4 are supported and meet the written description requirement, US Patent No. 6,542,602 to Elzar is not prior art, and the Examiner’s 35 U.S.C § 102(e) rejection is moot. Applicant respectfully requests the Examiner to withdraw the 35 U.S.C. § 112, first paragraph rejection, and the 35 U.S.C. § 102(e) rejection of claims 2-4.

In addition, Applicant respectfully renews his request that the Examiner declare an interference between this application and U.S. Patent No. 6,542,602, which issued to Elazar on April 1, 2003. Should the Examiner deem a telephone conference to be beneficial in expediting declaration of the interference, the Examiner is invited to call the undersigned attorney at the telephone number listed below. No fees are believed to be due at this time, however, should any fees be deemed required, please charge such fees therefor to Deposit Account No. 23-1925.

Respectfully submitted,



A. James Richardson  
Reg. No. 26,983

BRINKS HOFER GILSON & LIONE  
One Indiana Square, Suite 1600  
Indianapolis, Indiana 46204-2033  
Telephone: (317) 636-0886  
Fax: (317) 634-6701



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,301	04/10/2001	Valery A. Petrushin	10022/151	2957
33391	7590	07/08/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE ONE INDIANA SQUARE, SUITE 1600 INDIANAPOLIS, IN 46204			TIEU, BENNY QUOC	
			ART UNIT	PAPER NUMBER
			2642	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**RECEIVED**

JUL 12 2004

BRINKS, HOFER,  
GILSON & LIONE

**Advisory Action**

Application No.

09/833,301

Applicant(s)

PETRUSHIN, VALERY A.

Examiner

Benny Q. Tieu

Art Unit

2642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheets.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 2-4.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

**RECEIVED**

JUL 1 2 2004

BRINKS, HOFER,  
GILSON & LIONEBenny Q. Tieu  
Primary Examiner  
Art Unit: 2642

The Examiner strongly believes the Applicant's specification does not support the claimed limitations.

Applicant states that "No portion of the claim requires the step of determining from the pre-recording whether said first speech portion satisfies a monitoring condition". But this is wrong. The Examiner directs the Applicant to columns 8 and 9 of the '602 patent which states: "A portion of the audio and/or screen data may be pre-recorded prior to and in support of performing step 200, in which the monitoring condition is tested." (emphasis added). Clearly, the pre-recorded portion in step a is used for the purpose of determining the monitoring condition in step b of the claims.

Further in the response, Applicant agrees that the first step of claims 2-4 requires that some portion of a telephone speech be recorded in advance of the second step. Applicant also agrees that the second step requires some determination be made from that portion of the telephone speech. Applicant then puts a condition "but it can be in "real-time"". Based on Webster's New World Dictionary, third college edition, "pre-" is "before in time, earlier (than), prior (to)". Hence, "real-time" condition that Applicant relies on is wrong.

Applicant continues that "This "real-time" analysis of the speech, as opposed to a playback mode, is precisely the fact situation that the Examiner has constructed from the applicant's specification and so it must be supported under 35 U.S.C. 112". Applicant should note that the Examiner has never constructed from the applicant's specification that the event is in real-time or in a playback mode.

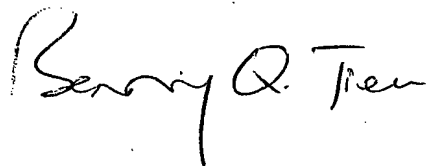
In addition, Applicant directs the Examiner to columns 6 and 7 of the '602 patent for the Applicant's arguments "real-time" analysis. It should be noticed that the specification including

Art Unit: 2642

many embodiments. The columns that Applicant directed to is simply not the claimed embodiment where step a is pre-recording, step b is determining and step c is recording a second portion.

Applicant further argues that "There is nothing in claims 2-4 or the '602 patent that precludes the alarm condition occurring in real-time. While according to claims 2-4 there must be a first portion of speech that is recorded, and there must be some triggering characteristic observed in this first portion of the speech, the claims do not require that this triggering characteristic be extracted from the recording - it merely needs to be extracted from the speech itself either in "real-time" or in "play-back". The Examiner respectfully disagrees. Applicant states that "a first portion of speech is recorded". This is incorrect. Claims 2-4 require a first portion of speech is PRE-RECORDED. Since Applicant's arguments are outside of the scope of the claims, the Examiner needs not to respond further in details for these arguments.

In conclusion, the Examiner maintains the 35 U.S.C. 112, first paragraph rejection and the 35 U.S.C. 102(e) rejection of claims 2-4.



**BENNYTIEU**  
**PRIMARY EXAMINER**

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 22, 2004.

Deanna L. Hasler  
Deanna L. Hasler

PATENT

Our Case No. 10022/151

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
Valery A. Petrushin ) Group Art Unit 2655  
Serial No.: 09/833,301 ) Examiner: James Wozniak  
Filed: April 10, 2001 )  
For: SYSTEM, METHOD AND ARTICLE OF )  
MANUFACTURE FOR DETECTING EMOTION IN )  
VOICE SIGNALS BY UTILIZING STATISTICS )  
FOR VOICE SIGNAL PARAMETERS )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REQUEST FOR DECLARATION OF INTERFERENCE

Sir:

In response to the Office Action of December 24, 2003, please enter the following amendments in the above-referenced application. In response to the Office Action, Applicant has canceled original independent claim 1 and added new independent claims 2-4. Applicant respectfully requests the Examiner to declare an interference between this application and U.S. Patent No. 6,542,602, which issued to Elazar on April 1, 2003.

**Amendments to the Specification** begin on page 2 of this paper.

**Amendments to the Claims** are reflected in the listing of claims which begins on page 3 of this paper.

**Remarks/Arguments** begin on page 5.

## SPECIFICATION AMENDMENTS

Please amend the current title of the invention, which appears on the first line of page 1, as set forth below:

-- ~~System, Method and Article of Manufacture for Detecting Emotion in Voice Signals in a Call Center By Utilizing Statistics For Voice Signal Parameters~~ --

Please replace the first paragraph on page 1, beginning on line 4 and ending on line 5, as follows:

--This application claims priority to and is a continuation of U.S. Pat. Application Ser. No. 09/388,909, filed August 31, 1999, which is herein incorporated by reference.--

## CLAIM AMENDMENTS

1. (canceled)

2. (new) A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call.

3. (new) A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call; and

(d) wherein said determining step comprises determining a speech rate of words spoken during said telephone call and wherein said monitoring condition is whether said speech rate exceeds a predetermined level.



4. (new) A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call; and
- (d) wherein said determining step comprises determining a state of emotion

present during said telephone call and wherein said monitoring condition is whether said state of emotion exceeds a predefined emotion threshold.

### **REMARKS**

In response to the Office Action, Applicant has cancelled independent claim 1, thereby obviating the previous rejection. Pursuant to 37 C.F.R. §§ 1.607(a)(1), Applicant hereby notifies the Examiner that, in the above captioned patent application, Applicant has copied claims from U.S. Patent 6,542,602 (hereinafter "the '602 patent"), which issued on April 1, 2003. The present application claims priority to and is a continuation of U.S. Patent Application Serial No. 09/388,909, which has an effective filing date of August 31, 1999. The '602 patent has an effective filing date of February 14, 2000, which makes Applicant the senior party.

Pursuant to 37 C.F.R. § 1.607(a)(2), Applicant herein suggests the following counts:

#### **Count 1**

A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call.

Pursuant to 37 C.F.R. § 1.607(a)(3), claim 6 of the '602 patent corresponds exactly to proposed count 1.

#### **Count 2**

A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
- (b) determining whether said first speech portion satisfies a monitoring condition,

and, if so:

- (c) recording at least a second portion of said telephone call; and

(d) wherein said determining step comprises determining a speech rate of words spoken during said telephone call and wherein said monitoring condition is whether said speech rate exceeds a predetermined level.

Pursuant to 37 C.F.R. § 1.607(a)(3), claim 10 of the '602 patent substantially corresponds to proposed count 2. Count 2 differs from claim 10 of the '602 patent in that the monitoring condition is whether the speech rate exceeds a predetermined level as opposed to a predefined speech rate. The claim limitation of a predetermined level corresponds identically to the claim limitation of a predefined speech rate. Applicant's predetermined level limitation is directly related to the rate of speech.

### **Count 3**

A method for monitoring telephonic interactions of an agent with customers, the method comprising:

- (a) pre-recording a first speech portion of a telephone call received by an agent;
  - (b) determining whether said first speech portion satisfies a monitoring condition,
- and, if so:
- (c) recording at least a second portion of said telephone call; and
  - (d) wherein said determining step comprises determining a state of emotion present during said telephone call and wherein said monitoring condition is whether said state of emotion exceeds a predefined emotion threshold.

Pursuant to 37 C.F.R. § 1.607(a)(3), claim 14 of the '602 patent corresponds exactly to proposed count 3 if rewritten in independent claim form.

Claim 2-4 of the present application correspond to proposed counts 1-3. Accordingly, the requirements of 37 C.F.R. § 1.607(a)(4) have been met.

Pursuant to 37 C.F.R. § 1.607(a)(5), Applicant hereby sets forth the following claim charts that apply the terms of the pending claims of the application that are identified as corresponding to each count as well as to the disclosure of the application.

**Count 1**

<b>Applicant's Claim 2</b>	<b>Support In Applicant's Specification</b>
2. A method for monitoring telephonic interactions of an agent with customers, the method comprising:	Page 16, lines 2-10; Page 26, lines 3-5; Page 26, lines 25-28; and throughout the specification.
(a) pre-recording a first speech portion of a telephone call received by an agent;	Page 26, lines 21-23; and throughout the specification.
(b) determining whether said first speech portion satisfies a monitoring condition, and, if so:	Page 26, lines 17-21; and throughout the specification.
(c) recording at least a second portion of said telephone call.	Page 26, lines 21-23; and throughout the specification.

**Count 2**

<b>Applicant's Claim 3</b>	<b>Support In Applicant's Specification</b>
2. A method for monitoring telephonic interactions of an agent with customers, the method comprising:	Page 16, lines 2-10; Page 26, lines 3-5; Page 26, lines 25-28; and throughout the specification.
(a) pre-recording a first speech portion of a telephone call received by an agent;	Page 26, lines 21-23; and throughout the specification.
(b) determining whether said first speech portion satisfies a monitoring condition, and, if so:	Page 26, lines 17-21; and throughout the specification.
(c) recording at least a second portion of said telephone call.	Page 26, lines 21-23; and throughout the specification.
(d) wherein said determining step comprises determining a speech rate of words spoken during said telephone call and wherein said monitoring condition is whether said speech rate exceeds a predetermined level.	Page 2, line 13; Page 20, line 18 and 24; Page 22, line 3; and throughout the specification.

**Count 3**

<b>Applicant's Claim 4</b>	<b>Support In Applicant's Specification</b>
2. A method for monitoring telephonic interactions of an agent with customers, the method comprising:	Page 16, lines 2-10; Page 26, lines 3-5; Page 26, lines 25-28; and throughout the specification.
(a) pre-recording a first speech portion of a telephone call received by an agent;	Page 26, lines 21-23; and throughout the specification.
(b) determining whether said first speech portion satisfies a monitoring condition, and, if so:	Page 26, lines 17-21; and throughout the specification.

(c) recording at least a second portion of said telephone call.	Page 26, lines 21-23; and throughout the specification.
(d) wherein said determining step comprises determining a state of emotion present during said telephone call and wherein said monitoring condition is whether said state of emotion exceeds a predefined emotion threshold.	Page 26, lines 17-19; and throughout the specification.

Applicant's application is clearly directed towards monitoring telephone call conversations between agents and customers in a call center environment. The entire conversations between the agents and customers may be recorded, or portions of the conversations may be recorded, if the claimed invention detects that a monitoring condition is satisfied. As set forth in Applicant's specification, the preferred monitoring condition is nervousness, however, other emotions may be monitored as well. *See* Page 25, line 29 to Page 26, line 2. The '602 patent is directed toward the same type of monitoring conditions and contains claims identical to, or virtually identical to, the pending claims of the present application. Applicant's present claims are patentable over the prior art of record and Applicant is entitled to a patent for these claims.

The pending claims of the present application have been placed in the application less than one year after the issue date of the patent. As such, the requirements of 37 C.F.R. § 1.607(a)(6) are met as well. Further, Applicant's effective filing date is more than three months earlier than the effective filing date of the '602 patent. To that end, Applicant respectfully requests the declaration of an interference between the present application and the '602 patent with Applicant designated as the senior party.

Respectfully submitted,



Dean E. McConnell  
Attorney Reg. No. 44,916

BRINKS HOFER GILSON & LIONE  
One Indiana Square, Suite 1600  
Indianapolis, Indiana 46204  
Telephone: 317-636-0886  
Facsimile: 317-634-6701